

“(B) notifies the Secretary of the Treasury and the Secretary of Homeland Security of that determination.

“(5) MODIFICATION OR RESCISSION.—

“(A) IN GENERAL.—An interested person may petition the Commission for a modification or rescission of an exclusion order issued under subsection (a) with respect to covered articles only after an affirmative extension of the order is issued under subsection (c)(3) in accordance with the procedures under subsection (c)(2).

“(B) REVISITATION OF EXCLUSION.—The Commission may modify or rescind an exclusion order issued under subsection (a) at any time at the discretion of the Commission.

“(C) BURDEN OF PROOF.—The burden of proof in any proceeding before the Commission regarding a petition made by an interested person under subparagraph (A) shall be on the interested person.

“(D) RELIEF.—A modification or rescission for which a petition is made under subparagraph (A) may be granted by the Commission—

“(i) on the basis of new evidence or evidence that could not have been presented at the prior proceeding; or

“(ii) on grounds that would permit relief from a judgment or order under the Federal Rules of Civil Procedure.

“(E) EVIDENTIARY STANDARD.—A modification or rescission may be made under subparagraph (A) if the Commission determines that there has been a clear and convincing showing to the Commission from an interested person that such a modification or rescission should be made.

“(e) JUDICIAL REVIEW.—

“(1) IN GENERAL.—Any person adversely affected by a final modification or rescission determination by the Commission under subsection (d)(5) may appeal such determination only—

“(A) in the United States Court of Appeals for the Federal Circuit; and

“(B) not later than 60 days after that determination has become final.

“(2) NO OTHER JUDICIAL REVIEW.—Except as authorized under paragraph (1), the determinations of the Commission under this section and any exclusion from entry or delivery or demand for redelivery in connection with the enforcement of an order by the Commission under this section may not be reviewed by any court, including for constitutional claims, whether by action in the nature of mandamus or otherwise.

“(3) PROCEDURES FOR REVIEW OF PRIVILEGED INFORMATION.—If an appeal is brought under paragraph (1) and the administrative record contains classified or other information subject to privilege or protections under law, that information shall be submitted confidentially to the court and the court shall maintain that information under seal.

“(4) APPLICABILITY OF USE OF INFORMATION PROVISIONS.—The use of information provisions of sections 106, 305, 405, and 706 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806, 1825, 1845, and 1881e) shall not apply to an appeal under paragraph (1).

“(f) INAPPLICABILITY OF THE ADMINISTRATIVE PROCEDURE ACT.—

“(1) IN GENERAL.—The requirements of subchapter II of chapter 5 of title 5, United States Code, shall not apply to—

“(A) an action conducted by the Commission under paragraphs (1) through (3) of subsection (c); or

“(B) the procedures for exclusion under paragraphs (4) and (5) of subsection (d).

“(2) ADJUDICATION.—Any adjudication under this section shall not be subject to the requirements of sections 554, 556, and 557 of title 5, United States Code.

“(g) FREEDOM OF INFORMATION ACT EXCEPTION.—Section 552 of title 5, United States

Code (commonly referred to as the ‘Freedom of Information Act’), shall not apply to the activities conducted under this section.

“(h) APPLICABILITY TO CERTAIN INTELLIGENCE ACTIVITIES.—Nothing in this section shall apply to authorized intelligence activities of the United States.

“(i) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require or permit the disclosure of classified information or information relating to intelligence sources and methods to any party other than an officer or employee of the United States Government who has been appropriately cleared to receive that information.

“(j) REGULATIONS.—The Commission may prescribe such regulations as the Commission considers necessary and appropriate to carry out this section.

“(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

“(1) DEFINITIONS.—In this section:

“(1) ARTICLE.—The term ‘article’ includes any article or component of an article.

“(2) FOREIGN AGENT; FOREIGN INSTRUMENTALITY; IMPROPER MEANS; MISAPPROPRIATION; OWNER; TRADE SECRET.—The terms ‘foreign agent’, ‘foreign instrumentality’, ‘improper means’, ‘misappropriation’, ‘owner’, and ‘trade secret’ have the meanings given those terms in section 1839 of title 18, United States Code.

“(3) INTERESTED PERSON.—The term ‘interested person’, with respect to an allegation under subsection (b)(5), means a person named in the allegation or otherwise identified by the Commission as having a material interest with respect to the allegation.”

(c) CLERICAL AMENDMENT.—The table of contents for the Tariff Act of 1930 is amended by inserting after the item relating to section 341 the following:

“Sec. 342. National security exclusion for articles or components of articles that contain, were produced using, benefit from, or use trade secrets misappropriated or acquired through improper means by a foreign agent or foreign instrumentality.”

(d) CONFORMING AMENDMENT.—Section 514(a)(4) of the Tariff Act of 1930 (19 U.S.C. 1514(a)(4)) is amended by striking “a determination appealable under section 337 of this Act” and inserting “in connection with the enforcement of an order of the United States International Trade Commission issued under section 337 or 342”.

AUTHORITY FOR COMMITTEES TO MEET

Mrs. SHAHEEN. Mr. President, I have 14 requests for committees to meet during today’s session of the Senate. They have the approval of the Majority and Minority Leaders.

Pursuant to rule XXVI, paragraph 5(a), of the Standing Rules of the Senate, the following committees are authorized to meet during today’s session of the Senate:

COMMITTEE AGRICULTURE, NUTRITION, AND FORESTRY

The Committee on Agriculture, Nutrition, and Forestry is authorized to meet during the session of the Senate on Wednesday, November 17, 2021, at 10:15 a.m., to conduct a hearing on nominations.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

The Committee on Banking, Housing, and Urban Affairs is authorized to

meet during the session of the Senate on Wednesday, November 17, 2021, in executive session to vote on nominations.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

The Committee on Commerce, Science, and Transportation is authorized to meet during the session of the Senate on Wednesday, November 17, 2021, at 10 a.m., in executive session.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

The Committee on Commerce, Science, and Transportation is authorized to meet during the session of the Senate on Wednesday, November 17, 2021, at 10:15 a.m., to conduct a hearing on nominations.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

The Committee on Environment and Public Works is authorized to meet during the session of the Senate on Wednesday, November 17, 2021, at 10 a.m., to conduct a hearing on a nomination.

COMMITTEE ON FINANCE

The Committee on Finance is authorized to meet during the session of the Senate on Wednesday, November 17, 2021, at 9:30 a.m., to conduct a hearing on nominations.

COMMITTEE ON FOREIGN RELATIONS

The Committee on Foreign Relations is authorized to meet during the session of the Senate on Wednesday, November 17, 2021, at 10 a.m., to conduct a hearing.

COMMITTEE ON INDIAN AFFAIRS

The Committee on Indian Affairs is authorized to meet during the session of the Senate on Wednesday, November 17, 2021, at 2:30 p.m., to conduct a business meeting.

COMMITTEE ON THE JUDICIARY

The Committee on the Judiciary is authorized to meet during the session of the Senate on Wednesday, November 17, 2021, at 10 a.m., to conduct hearing on nominations.

COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP

The Committee on Small Business and Entrepreneurship is authorized to meet during the session of the Senate on Wednesday, November 17, 2021, at 2:30 p.m., to conduct a business meeting.

COMMITTEE ON VETERANS’ AFFAIRS

The Committee on Veterans’ Affairs is authorized to meet during the session of the Senate on Wednesday, November 17, 2021, at 3 p.m., to conduct a hearing.

SELECT COMMITTEE ON INTELLIGENCE

The Select Committee on Intelligence is authorized to meet during the session of the Senate on Wednesday, November 17, 2021, at 2 p.m., to conduct a closed briefing.

SUBCOMMITTEE ON GOVERNMENT OPERATIONS AND BORDER MANAGEMENT

The Subcommittee on Government Operations and Border Management of the Committee on Homeland Security

and Governmental Affairs is authorized to meet during the session of the Senate on Wednesday, November 17, 2021, at 2:30 p.m., to conduct a hearing.

SUBCOMMITTEE ON STRATEGIC FORCES

The Subcommittee on Strategic Forces of the Committee on Armed Services is authorized to meet during the session of the Senate on Wednesday, November 17, 2021, at 4:30 p.m., to receive a briefing.

PRIVILEGES OF THE FLOOR

Mr. KING. Mr. President, I ask unanimous consent that my military fellow, Sean McDonald, have floor privileges during the consideration of the fiscal year 2022 National Defense Authorization Act and any consideration of matters pertaining to national security.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR THURSDAY, NOVEMBER 18, 2021

Mr. SCHUMER. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m., Thursday, November 18; that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and morning business be closed; that upon the conclusion of morning business, the Senate resume consideration of the motion to proceed to H.R. 4350, the National Defense Authorization Act, postcloture; further, that all time during adjournment, morning business, recess, and leader time count postcloture.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. SCHUMER. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it stand adjourned under the previous order.

There being no objection, the Senate, at 9:27 p.m., adjourned until Thursday, November 18, 2021, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate:

DEPARTMENT OF STATE

LAURA FARNSWORTH DOGU, OF TEXAS, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF HONDURAS.

N. NICKOLAS PERRY, OF NEW YORK, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO JAMAICA.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

MICHAEL F. GERBER, OF PENNSYLVANIA, TO BE A MEMBER OF THE FEDERAL RETIREMENT THRIFT INVESTMENT BOARD FOR A TERM EXPIRING SEPTEMBER 25, 2022, VICE MICHAEL D. KENNEDY, TERM EXPIRED.

MICHAEL F. GERBER, OF PENNSYLVANIA, TO BE A MEMBER OF THE FEDERAL RETIREMENT THRIFT IN-

VESTMENT BOARD FOR A TERM EXPIRING SEPTEMBER 25, 2026. (REAPPOINTMENT)

DEPARTMENT OF HOMELAND SECURITY

KENNETH L. WAINSTEIN, OF VIRGINIA, TO BE UNDER SECRETARY FOR INTELLIGENCE AND ANALYSIS, DEPARTMENT OF HOMELAND SECURITY, VICE DAVID JAMES GLAWE.

IN THE AIR FORCE

THE FOLLOWING NAMED AIR NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12212:

To be colonel

ADRIAN A. ANDREWS

IN THE ARMY

THE FOLLOWING NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be colonel

PETER S. BLACK
BENNY F. COLLINS
INGRID Y. HAWKINS
LAWRENCE A. JOINER
BRETT W. MARTIN
JENNIFER R. MARTIN
DENNIS M. O'BRIEN
BOBBY R. PATTON, JR.
ROBERT G. SACCA

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be major

NICHOLAS P. ADAMS
GABRIEL D. ADIBE
MICHAEL P. ADKINS
JESSICA R. AICH
YUSEF A. AKBARUT
PATRICK A. ANDERSON, JR.
SHELLEY T. ANSBIGIAN
RICHARD D. ATWOOD
MATTHEW R. AUDETTE
GIOVANNI E. AVELAR
SARAH D. AX
GABRIEL A. BAILEY
LOGAN D. BAISDEN
RACHEL C. BAKER
JASON M. BALDWIN
GEOFFREY T. BALL
BRIAN S. BANKS
BRIAN A. BARNES
WESTON E. BARTKOSKI
SAMUEL L. BATCHELDER
ALLISON E. BATES
CHARLES J. BAUMANN III
ANTHONY E. BEAUPRE
DREW W. BECK
ILANA B. BENCHICH
STEPHEN R. BENDER
JUSTIN S. BENNETT
OLLY M. BERGER
BRIAN J. BERLING
RAMON A. BERND
THOMAS W. BERTRAM
NATHAN T. BERTRAND
ANDREW P. BIBBY
PAUL S. BLACKBURN
ANDREW S. BLACKER
TIMOTHY P. BLAINE
PHILIP E. BLAIS
JASPREET BLEVINS
JOHN L. BOATNER
NICHOLAS J. BOIRE
TYLER D. BONNETT
MATTHEW T. BORROWSKI
LUCAS T. BOSCH
ROBIN C. BOSMAN
JACK T. BOSWELL
COREY L. BOUDIETTE
CHARLES K. BOUSA III
TYLER R. BRACONI
PRESTON P. BRAINERD
MICHAEL A. BRESSLER
KYLE D. BRITT
MARK T. BROOKMAN
JOSHUA P. BROOKS
THOMAS K. BROUGHNER
ASHLEY S. BROWN
JAMES A. BROWN
ROBERT V. BROWN
KYLE D. BROWNE
TIMOTHY P. BRUNSTETTER
ANDREW M. BUCK
NICHOLAS J. BUDA
DAVID A. BUNTING
ALLISON M. BURGOS
PATRICK J. BURNS II
CHARLOTTE M. BUTTERS
ROBERT D. CAMERON
DANIEL J. CANHAM
REBECCA R. CARLSON
ADRIAN CARRILLO
DYLAN M. CASEY
MORGAN T. CELAYA
ALICIA E. CHAMBERS
HECTOR T. CHEN

SONG L. CHEN
RACHEL E. CLINE
BRENT A. COCHRAN
DAVID W. COFFMAN, JR.
BLAKE C. COLE
STEPHEN M. COLLINS
KENTON M. COMSTOCK
MICHAEL R. CONLON
RENATO COSTA
SCOTT M. COTTON
JOHN M. COUTOUMAS
ALLEN M. COWHERD
RUSSELL S. COX
KELLEN E. CRAWFORD
NATHANIEL S. CREMEAN
AVERY M. CRISP
NICHOLAS A. CRYMES
LUCAS C. CULVER
THOMAS W. CUNNINGHAM
KYLE W. DALY
STEPHANIE L. DAMREN
CHARLES T. DANIELS
KRISTOFER T. DANIELSON
TEDI J. DAVIDSON
RAQUEL R. DAVILA
GREGORY S. DAVIS
JESSICA M. DAVIS
NICHOLAS R. DAVIS
EZRA F. DAY
CALIXTE DEFAY
DOMINIC P. DELLAPELLE
NICHOLAS J. DELUCA
CHARLES J. DEMMER
NICHOLAS A. DENNEY
GARRETT A. DENNIS
KEVIN D. DEPINTO
PETER J. DESCHLER
MATTHEW P. DESMET
ADAM J. DICKSON
JARROD M. DLUGOS
ANDREW G. DOLVIN
ALEXANDRA DONNENWIRTH
CHARLES C. DOWLING, JR.
CONOR J. DOWNS
ANDREW P. DUNBECK
MATTHEW A. DUNCAN
PAIGE E. DUNLAP
MARK A. DURAN
MCKENZIE B. EHRHARDT
VALONNE L. EHRHARDT
DAVID A. EKLUND
BRANDON S. ELIASON
EMILY E. ELLEDGE
STEVEN M. ELLINGTON
CHRISTOPHER R. EMDE
DAVID J. ENGEL
ERIK J. ERLANDSON
MILES A. ESSAY
PAUL B. ESTES
ANDREW J. EUBANKS
MATTHEW H. EVERS
ANDREW H. EZELL
DAVID J. FAERBER
CHRISTOPHER M. FARHAR
EMILY R. FAVORITE
ADAM FEDERICO
MATTHEW D. FERNS
ELVIN J. FINNICUM III
THOMAS G. FISCHER
ADRIAN N. FORTEZA
JORDAN L. FOX
WILLIAM R. FOXTANTZ
SETH T. FREEDMAN
MICHAEL A. FREIBERGER
ANDREW J. FREMMING
RICHARD A. FRENCH
JASON B. FREY
MARIA T. FULCHER
JOSEPH F. GABEL
MATTHEW V. GADYK
KYLE T. GANNON
LONDON M. GANT
MICHAEL H. GARDINER, JR.
CHRISTOPHER L. GARIBAY
YICHENG S. GARRARD
JOHN V. GATS
JOHN E. GELDMACHER
KYLE C. GENTRY
JOHN T. GEORGE
STEPHEN M. GEORGE
ROSS D. GESKE
CHRISTOPHER G. GIBELLY
NICKOLAS J. GILLESPIE
SEAN M. GILROY
ERIK V. GILLYN
BENJAMIN N. GOODRICH
LUKE T. GOODWILL
STEVEN J. GORE
LESLIE L. GRANTHAM
JASON P. GRANZELLA
DARRYL D. GRAVELLE
WALTER L. GRAVES II
JOSHUA A. GRAY
CHAD M. GREENE
JAMIE R. GREENE
DANIEL J. GREENLEE
JOSHUA R. GREGG
MATTHEW K. GREGORY
DAVID G. GREY
STUART C. GRIFFITHS
JOSEPH C. GUNTER
MATTHEW D. GURRISTER
DUSTIN K. HAISLIP
EDWARD R. HAMER II
JEREMY S. HANEY
WILLIAM R. HANLEY
JASON S. HARBISON